



BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Mark W. Thompson
SERIAL NO.: 10/784,056
TITLE: GUARD FOR A GRASS TRIMMING DEVICE
FILED: February 20, 2004
Group/A.U.: 3724
Conf. No.: 6854
EXAMINER: Douglas D. Watts

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This is an appeal from the final rejection of claims 1-9 and 11-16 dated February 8, 2005.

I. Real Party In Interest:

The real party in interest of the instant appeal is Mark W. Thompson an address of 12286 Sycamore Road, Ottumwa, Iowa 52501.

II. Related Appeals and Interferences:

There are no related appeals or interferences.

III. Status of the Claims:

Claims 1-9 and 11-16 are pending in this application and appear as Appendix A of this brief.

250.00 UP

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(A))

I hereby certify that this document and the documents referred to as enclose therein are being deposited with the United States Postal Service as First Class mail addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, Alexandria, VA 22313-1450, on this 23rd day of March, 2005.

Timothy J. Zarley

IV. Status of Amendments:

No amendments to the claims have been made since the final rejection of February 8, 2005.

V. Summary of Claimed Subject Matter:

Independent claim 1 relates to a guard 10 for a grass trimming device 12 having a shaft 14 with a trimming head 16 at one end and a handle 18 at the opposite end. (Page 3, lines 3-6). The guard 10 also has a support member 20 that is slidably connected to the shaft with a releasable clamp 22. (Page 3, lines 8-13). The guard 10 also has a guard member 24 that extends outwardly from the second end of the support member 20 to deflect grass clippings projected from the head of the grass trimming device. (Page 3, lines 14-21).

Independent claim 6 is similar to independent claim 1 though claim 6 does not require that the support member be slidably connected to shaft 14; nonetheless claim 6 adds the limitation of a means 22 for adjusting the distance between the guard member 24 and the shaft 14. (Page 3, lines 22-25). Furthermore, claim 6 requires that the guard 10 is positioned at a 90 degree angle to the shaft 14. (Pages 3, lines 18-21).

Independent claim 11 requires a guard 10 for a grass trimming device 12 having an elongated shaft 14 with a grass trimming head 16 at one end and a handle 18 at an opposite end. (Page 3, lines 3-6). This guard comprises a support member 20 connected to the shaft 14 at a first end. (Page 3, lines 7-13). The guard 10 also has a flexible brush member 24 connected to the second end of the support member 20 to deflect grass clippings projected from the head 16. (Page 3, lines 14-18).

VI. Grounds of Rejection to be Reviewed on Appeal:

The Examiner has rejected claims 1, 4-7, and 9 under 35 U.S.C. § 102(e) as being anticipated by Arsenault (U.S. Patent No. 6,757,980, hereinafter "Arsenault"). Claims 1, 4-7 and 9 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Ezell (U.S. Patent No. 6,226,876, hereinafter "Ezell"). Claims 1, 4-7 and 9 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Sugihara (U.S. Patent No. 5,924,205, hereinafter "Sugihara"). Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Arsenault in view of Etchen (U.S. Patent No. 2,627,657 hereinafter "Etchen"). Claims 3, 8, 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ezell. Finally, claims 11-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sugihara.

VII. Argument:

A. Description of the Prior Art

1. Arsenault, U.S. Patent No. 6,757,980

Arsenault teaches a weed trimmer having a trimmer head 14 and a shield 20 that is connected to trimmer shaft 12. (Col. 3, lines 43-45). Shield 20 is secured to the shaft with an extension arm 30 that is pivotally attached to clamp 40. (Col. 3, lines 23-24). Additionally, according to the specification bolts 22 are inserted through holes 36 in the upper end of the extension arm and lower section of the clamp 40 are drawn tight by wing nuts 34 to form pivotally adjustable connections at each end of the extension arm. (Col. 3, lines 49-52). Thus, Arsenault does not teach a guard 20 that is slidably connected to a shaft but instead is connected to an extension arm 30 that is pivotally connected

to a clamp 40 that is secured to the shaft. Additionally, the guard 20 as best seen in Fig. 1, does not lie at a 90 degree angle to the shaft and finally, the transparent shield 20 is a solid shield and does not have a flexible brush member.

2. Sugihara (U.S. Patent No. 5,924,205)

Sugihara teaches a trimmer 11 having a trimmer head 14 that has a bracket 15 that attaches a protective cover 16 securably to the operational rod 12 of trimmer 11. (Col. 4, lines 47-57). The protective cover 16 is attached to an upper wall plate 17 that is attached to a retaining piece 17B that is part of bracket 15. (Col. 4, lines 58-65). Thus, cover 16 is secured to the upper wall plate 17 by fastening nuts 30 and bolt 28 and therefore the protection portion 18 is secured to the upper wall plate 17 of the bracket 15 that is secured to rod 12. (See Fig. 1). Furthermore, as seen in Fig. 1 the protection portion 18 is at a 90 degree angle to the ground and not to the rod 12, and the protection portion 18 is not a brush or flexible member.

3. Ezell (U.S. Patent No. 6,226,876).

Ezell teaches a trimmer having a shaft 12 that is constructed having an upwardly extending portion 16 that raises a debris shield 14 that is attached to the upwardly extending portion 16 by fasteners 22. (Col. 2, lines 23-35). Ezell also teaches a first clamp that is a unitary clamp 42 that is constructed by bending an end of a bracket around a diameter sized so as to accommodate a shaft of a trimmer and forming a tab 44 on the end of the bracket. (Col. 3, lines 45-47). A bolt, screw, or other fastener 46 is inserted through aligned openings drilled in tab 44 and in opposite side of the bracket, the bolt or screw used to tighten clamp 42 on the trimmer shaft. (Col. 3, lines 48-51). The second

type of clamp that Ezell teaches is a two-piece clamp 48 constructed having a separate clamp portion 50 with two openings which screws or bolts 52 are inserted, with corresponding openings provided in a bracket 54. (Col. 3, lines 52-55). Additionally, with this construction, when fasteners 52 are tightened, the clamp is pulled tight against the shaft of the trimmer. (Col. 3, lines 58-60). Thus, both clamp systems secure the guard to the shaft and are securably connected. Additionally, as best seen in the figures the shield is never at a 90 degree angle to the shaft of the trimmer and finally, as also seen in the figures, the shield is always a solid member and is never a flexible brush member.

4. Etchen (U.S. Patent No. 2,627,657).

Etchen teaches a fabric cutter guard having a bottom guard plate 8 which is slotted at 81 to embrace or receive the cutter disk 4 and the upright 5. (Col. 1, lines 47-50). The guard is mounted for vertical and tilting adjustment means with brackets 13 and 14 which have opposed recesses 15 and 16 and are secured to the underside of the housing by screws 18 received in holes 19. (Col. 2, lines 11-17). Additionally, guard plates 8 and 9 are formed of a transparent material commercially known as Plexiglas. (Col. 2, lines 28-35). Additionally, there is no shaft shown in Etchen. Thus, Etchen does not show a slidable connection, a guard that is at 90 degrees to a shaft, nor does it teach a flexible brush member.

B. Argument In Support of Reversal

1. Rejection under 35 U.S.C. § 102.

Claims 1-9 and 11-16 are pending in the present application. Claims 1, 4-7, and 9 have been rejected under

35 U.S.C. § 102(e) as being anticipated by Arsenault; 35 U.S.C. § 102(b) as being clearly anticipated by Ezell; and 35 U.S.C. § 102(b) as being clearly anticipated by Sugihara et al. Claim 2 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Arsenault in view of Etchen. Claims 3, 8 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ezell. Claims 11-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sugihara et al. Applicant traverses all rejections.

During the examination of an application the Examiner should cite appropriate prior art which is nearest to the subject matter defined in the claims and such prior art's pertinence should be explained. (MPEP Section 705.05. See also 37 C.F.R. 1.104). The Examiner has failed to properly identify the pertinence of the relevant prior art and has merely rejected the claims by citing the prior art references and stating that the prior art reference clearly anticipates the Applicant's claims. Therefore, the Examiner's rejections should be withdrawn for failure to comply with 37 C.F.R. § 1.104. Regardless, the Applicant does not fully understand the rejection by the Examiner, the Applicant has made a good faith effort to amend the current claims and argue the patentability of the present claims in view of the references cited.

Claims 1, 4-7, and 9 have been rejected under 35 U.S.C. § 102 as being clearly anticipated by Arsenault Ezell, and Sugihara et al. Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the

elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharm., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Claim 1 requires "a support member slidably connected to the shaft at a first end of the support member with a releasable clamp." The Arsenault, Ezell, and Sugihara devices do not provide for a releasable clamp but instead, Arsenault teaches a clamp 40 that has bolts 32 inserted through holes 36 in the upper section of clamp 40 and are drawn tight by wing nuts 34 to secure the clamp 40 to the trimmer shaft 12. (Col. 3, lines 45-47).

Similarly, Ezell teaches two types of clamps that may be used to clamp the various embodiments; a unitary clamp 42 that is constructed by bending an end of a bracket around a diameter sized so as to accommodate a shaft of a trimmer and forming a tab 44 on the end of the bracket and using a bolt,

screw or other fastener to tighten clamp 42 on the trimmer shaft. (Col. 3, 42-51). The second clamp 48 is a two piece clamp 48 that has separate clamp portion 50 provided with two openings through which screws or bolts 52 are inserted, with corresponding openings provided in a bracket 54, thus when the fasteners 52 are tightened, the clamps are pulled tight against the shaft of the string trimmer. (Col. 3, lines 52-60). Thus, the Ezell patent shows the traditional nut and bolt type clamps that are not releasable.

Sugihara et al. teaches a bracket 15 with an insert hole 22 and adjusting holes 23 that use a retaining bolt 24 and a fastening nut 25 to secure the bracket 15 to the trimmer shaft. (Col. 5, lines 14-27).

Thus, all three prior art references teach a clamp member that is not releasable and thus, does not allow the support member to freely slide along the shaft of the trimmer. By being able to slide the clamp and therefore guard to a desired position on the shaft before use, the present invention provides the advantage of flexibility of positioning the guard along the shaft to allow a user to further adapt the guard 10 based on the landscape terrain and desired use. (See page 4, lines 15-18). Therefore, by having a releasable clamp the claimed invention has a mechanical advantage over the prior art references cited. Consequently, the anticipation rejection must be withdrawn. Additionally, claims 2-5 depend on claim 1 and for at least this reason should be considered in allowable form.

Independent claim 6 requires a guard for a grass trimming device "wherein the guard is positioned at a 90 degree angle to the shaft." The Arsenault patent does not teach a guard that is positioned at a 90 degree angle to the shaft. Instead, the shield 20 is at a 90 degree angle with

the ground. (See Fig. 1). Similarly, Ezell teaches a shield or barrier 20 that is held in an upright position so that the shield 20 is of vertical length with the ground. (Col. 2, lines 33-41). Additionally, the Sugihara device teaches a protection portion 18 that has protection sheets 19A-19C that have vertical positions and thus is at a 90 degree angle with the ground and not the shaft. (Col. 7, lines 61-66). According to this invention because not all landscapes are flat, having a guard member that is at a 90 degree angle with the ground instead of being at a 90 degree angle with the shaft of the trimmer will cause the guard to not be in a position to provide maximum protection during the trimming process. (See page 1, lines 24-26). Thus, once again, the placing of the guard at a 90 degree angle to the shaft provides for a mechanical advantage and consequently each and every limitation of the claimed invention is not present in the prior art and therefore the anticipation rejection must be withdrawn. Claims 7-9, and new claim 16 depend on claim 6 and for at least this reason are considered in allowable form.

2. Rejection under 35 U.S.C. § 103.

Claim 2 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Arsenault in view of Etchen. Applicant asserts that the Examiner has failed to meet his burden of establishing a *prima facie* case of obviousness because the Etchen reference is not analogous art and should not be considered in an obviousness analysis. The references relied upon by the Examiner must either be in the field of the inventor's endeavor or reasonably pertinent to the specific problem with which the inventor was involved. In re Deminski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986).

The Etchen reference relied upon by the Examiner is not in the Applicant's field of endeavor. When regarding the field of endeavor, the present invention deals particularly with handheld grass and weed cutters. In contrast, the Etchen patent is directed toward a fabric cutter. Etchen is not directed toward nor does it discuss handheld grass and weed cutters. Consequently, this reference relied upon by the Examiner is not in the field of the inventor's endeavor and should not be relied upon.

The Etchen reference also is not reasonably pertinent to the Applicant's problem. The Federal Circuit has clarified how to determine whether a reference is reasonably pertinent to the particular problem in which the endeavor is involved as follows:

[a] reference is reasonably pertinent if ... it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. ... if a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem. ...[i]f it is directed to a different purpose, the inventor accordingly would have had less motivation or occasion to consider it.

In re Clay, 966 F.2d 656, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). (Emphasis added); See also MPEP § 2141.01(a).

According to the Applicant's specification, the purpose of the present invention is to provide "for a trimmer guard that will be sufficiently flexible to move in and around objects at different landscapes that at the same time will be able to be moved in varying directions to accommodate for trimming weeds." (Page 1, lines 27-31). This is accomplished in part by placing the guard on the trimmer at a 90 degree angle and making the guard out of brush bristles that are

flexible and easily moved. The purpose of the Etchen reference is to "provide guards for fabric cutters of the type which are translated over the work on which the pattern has been marked or outlined or superimposed." (Col. 1, lines 4-6).

Thus, Etchen is directed to the problem of protecting fabric cutters from a cutting disc while cutting fabric and not to preventing grass and small rocks from being projected from the rotating head of the cutter towards an individual using a trimmer. Therefore, Etchen solves a different problem than the claimed invention. Consequently, one skilled in the art would have less motivation or occasion to consider the reference cited by the Examiner. Because the reference relied upon by the Examiner is not in the field of the inventor's endeavor and is not reasonably pertinent to the specific problem in which the inventor is involved, the Etchen reference is not analogous and should not be considered in the obviousness analysis.

Even if the Etchen reference is considered analogous art, the Examiner has not shown that there is a motivation to combine the Etchen and Arsenault references. An obviousness analysis begins in the text of section 103 with the phrase "at the time the invention was made." For it is this phrase that guards against entry into the "tempting but forbidden zone of hindsight when analyzing the patentability of claims pursuant to that section. See Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861, 873, 228 USPQ 90, 98 (Fed. Cir. 1985), overruled on other grounds by Nobelpharma AB v. Implant Innovations, Inc., 141 F.3d 1059, 46 USPQ 2d 1097 (Fed. Cir. 1998). Measuring a claimed invention against the standard established requires the often difficult but critical step of casting the mind back to the time of the invention, to

consider the thinking of one of ordinary skill in the art, guided only by the prior art references and then-accepted wisdom in the field. See, e.g. W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). Close adherence to this methodology is especially important in the case of less technologically complex inventions, where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against the teacher."

Id.

The best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine] as an essential evidentiary component of an obviousness holding") combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight. See, e.g. Interconnect Planning Corp. v Feil, 774 F.2d 1132, 1138, 277 USPQ 543, 547 (Fed. Cir. 1985) ("The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.") In this case, the Examiner has fallen into the hindsight trap.

Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem solved, although

the suggestion more often comes from the teachings of the pertinent references. Rouffet, 149 F.3d at 1355. The range of sources available does not diminish the requirement for actual evidence. That showing must be clear and particular. See, e.g., C.R. Bard, 157 F.3d at 1352. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. e.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ 2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statement, however, are not sufficient to establish a genuine issue of material fact.").

This obviousness rejection asserted by the Examiner is based on a combination of prior art references. To justify this combination the Examiner simply states "[o]bviously one would want such an adjustable mounting for the guard of Arsenault to set the proper height after setting the position of the bracket on the support shaft." (Office action November 2, 2004, page 3). Rather than pointing to specific information in Etchen or Arsenault that suggest that their combination or even the general functions or parts of the prior art, the Examiner merely states that it would be obvious to combine the two. Nowhere does the Examiner particularly identify an suggestion, teaching, or motivation to combine the prior art references such as the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any facts or findings that might serve to support a proper obvious analysis. See e.g., Pro-Mold & Tool, 75 F.3d 1568, 1573, 37 USPQ2d. 1626, 1630 (Fed. Cir. 1996). To the contrary, the Examiner's decision is based on multiple prior art references that apparently can be combined to read on the claimed invention. (Office action of November 2, 2004, page

3). Yet this reference by reference analysis fails to demonstrate how Arsenault teaches its combination with Etchen to yield the claimed invention.

Even if the Etchen reference is considered analogous art, and there is a motivation to combine the references, the proposed combination does not disclose the invention as claimed. The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. See In re Vacck, 997 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); MPEP § 2143. To establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 57 C.C.P.A. 1029, 1032 (1970).

Claim 1 has been amended to require "a support member slidably connected to the shaft, a first end of the support member with a releasable clamp." The Etchen device does not teach a releasable clamp that slidably connects the support member to a shaft. Instead, the Etchen device teaches a guard having side guard plates 9 that are fastened to brackets 13 and 14. These brackets are not attached to a shaft and thus, cannot be the support member as described in claim 1. Thus, the Etchen device does not teach a support member slidably connected to the shaft at a first end of the support member with a releasable clamp as is required by the claim. As discussed earlier, Arsenault also does not teach this claim limitation. Thus, when combined, the two references do not result in the invention as claimed and the obviousness rejection must be withdrawn.

Claims 11-15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sugihara. According to the Examiner, "Sugihara shows the claimed invention except that the guard may not be considered to be a brush. This construction is very similar to a brush and it is therefore felt that using a brush would have been obvious. In other words, a brush is a mechanical equivalent to the guard of Sugihara and would be obvious to use therewith." (Office Action page 3). In order to rely on equivalents as a rational supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on Applicant's disclosure or the mere fact the components at issue are functional or mechanical equivalents. In re Scott, 323 F.2d 1016, 139 USPQ 297 (CCPA 1963). For example, in Scott, claims that were drawn to a hollow fiberglass shaft for archery and a process for the production thereof where the shaft differed from the prior art in the use of a paper tube as the core of the shaft as compared with the light wood or hardened foamed resin core of the prior art. The Court stated that components which are functionally or mechanically equivalent are not necessarily obvious in view of one another and in this case, the use of light wood or hardened foam resin core does not fairly suggest the use of a paper core. Id. (See also MPEP § 2144.06).

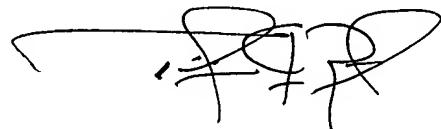
The Applicant submits that the Examiner has failed to meet the *prima facie* case of obviousness because the Examiner has not relied on equivalency that is recognized in the prior art. Specifically, the Examiner has not pointed to a piece of prior art that suggests that the shield seen in Sugihara will perform the same functions or be an equivalent of a brush as is required by independent claim 11. A brush uses elongated bristles that not only allow for the shield to

negotiate around obstructions but also allows for air flow through the guard member 24 while restricting the flow of grass particles. (See page 4, lines 21-31). Sugihara does not suggest that its shield is able to negotiate around obstructions and at the same time has the same air flow characteristics of a brush. Thus, because the equivalency is not recognized in the prior art the Examiner has not provided a *prima facie* case of obviousness and the rejection must be withdrawn. Consequently, claim 11 is in allowable form and for at least the reason that claims 12-15 that depend on claim 11 are also in allowable form.

Reversal is therefore respectfully requested.

Any fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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- JLH/bjs -

Attachment: Appendix

APPENDIX

VIII. Claims Appendix

1. (previously amended) A guard for a grass trimming device having a shaft with a head at one end and a handle at the opposite end, comprising:
a support member slidably connected to the shaft at a first end of the support member with a releasable clamp; and
a guard member connected to and extending outwardly from a second end of the support member to deflect grass clippings projected from the head of the grass trimming device.
2. (original) The guard of claim 1 wherein the support member has a means for adjusting the distance between the guard member and the shaft.
3. (original) The guard of claim 1 wherein the support member further comprises a pair of support members that are spaced in parallel relation extending beyond the shaft on opposite sides of the shaft.
4. (original) The guard of claim 1 wherein the guard member is made of flexible material.
5. (original) The guard of claim 1 wherein the guard is positioned at a 90 degree angle to the shaft of the grass trimming device.
6. (previously amended) A guard for a grass trimming device having a shaft with a head at one end and a handle at the opposite end, comprising:

a support member connected to the shaft at a first end of the support member;
a guard member connected to and extending outwardly from a second end of the support member to deflect grass clippings projected from the head; and
a means for adjusting the distance between the guard member and the shaft of the grass trimming device;
wherein the guard is positioned at a 90 degree angle to the shaft.

7. (original) The guard of claim 6 wherein the support member is slidably connected to the shaft.

8. (original) The guard of claim 6 wherein the support member further comprises a pair of support members that are spaced in parallel relation extending beyond the shaft on opposite sides of the shaft.

9. (original) The guard of claim 6 wherein the guard member is made of a flexible material.

10. (cancelled).

11. (original) A guard for a grass trimming device having a shaft with a head at one end and a handle at the opposite end comprising:

a support member connected to the shaft at a first end of the support member; and
a flexible brush member connected to a second end of the support member to deflect grass clippings projected from the head.

12. (original) The guard of claim 11 wherein the support member is slidably connected to the shaft.

13. (original) The guard of claim 11 wherein the support member has a means for adjusting the distance between the guard member and the shaft.

14. (original) The guard of claim 11 wherein the support member further comprises a pair of support members that are spaced in parallel relation extending beyond the shaft on opposite sides of the shaft.

15. (original) The guard of claim 11 wherein the guard member is positioned at a 90 degree angle to the shaft.

16. (previously added) The guard of claim 6 wherein the adjustable means is a plurality of holes that are used to adjust the vertical distance between the guard member and the shaft.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.